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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,511	02/24/2005	Mario Teixeira Cavalheiro	5345-2	7868
23117 7590 10/07/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
LOPITZ, FRANK D				
ART UNIT		PAPER NUMBER		
3745				
MAIL DATE		DELIVERY MODE		
10/07/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/525,511

Applicant(s)

CAVALHEIRO, MARIO TEIXEIRA

Examiner

F. DANIEL LOPEZ

Art Unit

3745

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

/F. DANIEL LOPEZ/
Primary Examiner, Art Unit 3745

Continuation of 11. does NOT place the application in condition for allowance because:

Appellant argues that reference numbers 1 and 4 are drawn to the first and second chambers. The examiner disagrees. The original specification indicated that 1 was the machine as a whole (page 2 line 19) and 4 as a cylinder sleeve (page 3 line 2), not as first and second chambers.

Appellant argues that in fig 2 the cylinder 32 is stationery and the cylinder 5 moves, so that the movement of the "cylinder 5 serves to occupy and un-occupy space since the water flows through the level of the water level in tank 3 as water is raised from a first tank 1 to a level of pipe 28". The examiner understands that this is how it is supposed to work. But does not understand how this is accomplished. There are stationary cylinders 4 and 32, and a movable cylinder (presumably 31, not 5 since there is no 5 in fig 2). What is unclear is how the cylinders 4, 31 and 32 interact to pump water up. If the movement of cylinder 31 displaces water from cylinder 4 then what does cylinder 32 do? If the water is pumped by the cylinder 32 displacing water from cylinder 31, as cylinder 31 moves, then how does the water get into and out of the cylinder 31? There is a "seal" 6 that can open (i.e. a valve) in the cylinder 4, but none in cylinder 31 to control water going into and out of the cylinder 31. For all the above reasons, it is clear what the second embodiment (fig 2) of the instant invention is trying to do, including trying to pump water, but not how it is accomplished; and therefore the objection to the specification is maintained.

Appellant argues that the device is directed to a machine for generating electricity and recites features that in practice have been seen to be 98% efficient. As such, the claims meet the requirement of having at least some degree of utility. Appellant states that the fact that the examiner questions whether the invention produces less energy than it receives is and should be beyond the scope of the analysis under 101. This is especially true in light of the conflation of the use and production of energy vs. the claimed production of electricity. The examiner disagrees. The question appears to be how much electricity does this machine produce? The only energy going into the system is electricity driving the motor (16) and energy driving the cylinder 7, 8 and 9. The only energy produced by the system is electricity from a generator driven by the turbine (27). Since the electricity going into and out of the machine is energy, an analysis of the electricity is an analysis of the flow of energy. Therefore, an analysis of the energy flow is central to what is happening with the electricity and central to the question of 101 analysis, rather than being beyond its scope. The analysis of the energy (i.e. electricity) flow is as follows: the machine is made and the tank 3, tube 2 and cylinder 1 is filled with water to an appropriate height. The motor 16 is plugged in (along with an air compressor, so that the pneumatic cylinders 7, 8 and 9 can function). The cylinder 5 is raised, using a certain amount of electricity, and then dropped displacing water to the pipe. The water flows through the pipe, to drive the turbine, generating electricity, and falls into the tank 3. If there was no friction in the gears, no energy used to drive the pneumatic cylinders and the weight the motor lifts exactly equals the weight of the water being lifted, the amount of electricity generated by the turbine would exactly equal the amount of electricity used by the motor; and so a meter looking at electricity flow to and from the machine would see an initial flow of electricity to the machine and then no further flow either into or out of the machine. But, since there is friction, the pneumatic cylinder use energy and the changes of exactly matching the weights is very small; the amount of electricity generated by the turbine will be less than the electricity used by the motor (and air compressor); and so a meter looking at electricity flow to and from the machine would see an initial flow of electricity to the machine and then a further continuous flow into the machine. No one would define this as being an electricity producing machine, or that it is 98% efficient; and therefore the 101 and 112 rejections are maintained..

Continuation of 13. Other: there is no changes to the claims and therefore the objections and rejections are maintained.